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10/777,978	02/12/2004	Stephen L. Manley	112056-0138U	7438

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CESARI AND MCKENNA, LLP
88 BLACK FALCON AVENUE
BOSTON, MA 02210

EXAMINER

LEROUX, ETIENNE PIERRE

ART UNIT	PAPER NUMBER
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2161

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/777,978	Applicant(s) MANLEY, STEPHEN L.	
	Examiner Etienne P. LeRoux	Art Unit 2161	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 16-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) 13-15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Status

Claims 1-43 are pending. Claims 1-12 and 16-43 are rejected as detailed below. Claims 13-15 are objected to.

Claim Objection

Claims 13-15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 101, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Incorporation of Material

The incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f).

The attempt to incorporate subject matter into this application by reference to a plurality of patent applications is ineffective because:

- (1) Applicant must specify a clear intent by using the root words “incorporate” and “reference”

(2) Clearly identify the referenced patent, application or publication by serial number, title and filing date.

NOTE:

Essential material may be incorporated by reference, but only by way of an incorporation by reference to a U.S. patent or U.S. patent application publication, which patent or patent application publication does not itself incorporate such essential material by reference. Refer 37 CFR 1.57

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

Specification

The abstract of the disclosure is objected to because it contains more than 150 words. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 1 is rejected under 35 U.S.C. 101 because no result step is claimed.

In instant patent application, a system for transmitting a data stream is claimed including a "standalone header" and a "data following header." No limitation is provided which claims the result and or functionality of the claimed "standalone headers" and the claimed "data following header." Furthermore, such result step is required to be useful, concrete and tangible such that the claimed invention as a whole accomplishes a practical application in the real world. State Street, 149 F.3d at 1373-74, 47 USPQ2d at 1601-02. The claimed headers are merely an abstract idea because they are associated in an unspecified manner with (1) extended attributes, (2) extended data stream characteristics and (3) data set information.

Furthermore, the claimed "standalone headers" and the "data following header" are not data structures per the IEEE definition of data structures.

Claim 1 does not claim patentable subject matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 7, 9-12 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by US Pat No 6,490,722 (Barton et al), hereafter Barton, in view of Pub No US 2004/0022278 issued to Thomas et al, (hereafter Thomas), as best examiner is able to ascertain.

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Claims 1, 7, 10-12 and 16:

Barton discloses:

a destination system having a replica residing therein [Fig 1];

a source system having a replication agent executing thereon, the replication agent adapted to generate the data stream [Fig 1].

Barton discloses the elements of the claimed invention as noted above but does not disclose:

the data stream comprising of:

a plurality of standalone headers having discrete identifiers, each of the plurality of standalone headers being representative of a plurality of data stream characteristics;

a data following header that follows, in the data stream, the plurality of standalone headers and that indicates that the data set information is following the data following header, the data set header including an extended attribute field that associates an extended attribute with the data set information.

Thomas discloses:

the data stream comprising of:

a plurality of standalone headers having discrete identifiers, each of the plurality of standalone headers being representative of a plurality of data stream characteristics [Figs 8-10, 16] ;

a data following header that follows, in the data stream, the plurality of standalone headers and that indicates that the data set information is following the data following header, the

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data set header including an extended attribute field that associates an extended attribute with the data set information [paragraphs 80, 108, 109].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Barton to include the above limitation(s) for the purpose of identifying data which follows.

Claim 2:

The combination of Barton and Thomas discloses the invention per claim 1 and furthermore discloses wherein the plurality of standalone headers each include an indication of one of a plurality of specialized header types and at least some of the plurality of specialized header types are adapted for carrying directory inode data [Thomas, paragraph 80]

Claim 3:

The combination of Barton and Thomas discloses the invention per claims 1 and 2 and furthermore discloses wherein the data stream is adapted to carry source file system inode data and source file generation numbers [Thomas, paragraph 80]

Claim 5:

The combination of Barton and Thomas discloses the invention per claim 1 and furthermore discloses the extended attributes include ACLs and streams associated with a plurality of operating systems and system architectures [Thomas, Fig 2, paragraph 67].

Claim 9:

The combination of Barton and Thomas discloses the invention per claim 1 and furthermore discloses wherein the data following header includes offset and block number

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information with respect to the data set information that follows the data following header

[Thomas, paragraph 80].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Barton and Thomas as applied to claims 1 and 2 above, and further in view of Pub No US 2003/0066062 issued to Brannock et al (hereafter Brannock), as best examiner is able to ascertain.

Claim 4:

The combination of Barton and Thomas discloses the elements of the above referenced claims but does not disclose wherein one of the specialized header types comprises a deleted files type and the directory inode data comprises a list of deleted files on the source file system. Brannock discloses wherein one of the specialized header types comprises a deleted files type and the directory inode data comprises a list of deleted files on the source file system [Fig 2, 26 and paragraph 29]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above combination of references to include wherein one of the specialized header types comprises a deleted files type and the directory inode data comprises a

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list of deleted files on the source file system as taught by Brannock for the purpose of tracking which have been deleted.

Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Barton and Thomas as applied to claim 1 above, and further in view of Pub No 2001/0001877 issued to French et al (hereafter French), as best examiner is able to ascertain.

Claims 6 and 8:

The combination of Barton and Thomas discloses the elements of the claimed referenced above but does not disclose wherein one of the plurality of standalone headers comprises an open file/undo header that instructs the destination system to revert to an earlier copy of a stored file identified by the open file/undo header. French discloses wherein one of the plurality of standalone headers comprises an open file/undo header that instructs the destination system to revert to an earlier copy of a stored file identified by the open file/undo header [paragraph 175]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above combination of references to include wherein one of the plurality of standalone headers comprises an open file/undo header that instructs the destination system to revert to an earlier copy of a stored file identified by the open file/undo header as taught by French for the purpose of reverting to a previous file version due to current unavailability of the most recent version of the file.

Regarding claims 17-43, examiner maintains that these claims can be rejected on a similar basis as claims 1-16.

Response to Arguments

Applicant's arguments filed 12/12/2006 have been fully considered but they are not persuasive.

Applicant's arguments with respect to the claim limitation "a destination system having a replica residing therein" are moot based on above new grounds of rejection.

Applicant's arguments relative to "the claimed invention is in the field of 'asynchronous mirroring or replication of data and more particularly the transmission of data from a source system to a destination system that may utilize differing platform architectures, file systems and/or protocols.' Page 2, lines 8-10."

Examiner is not persuaded. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, the newly cited reference, US Pat No 6,490,722 (Barton et al) clearly discloses "a destination system having a replica residing therein." The Barton reference and the Thomas reference are obviously in the same field of endeavor.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Etienne P. LeRoux whose telephone number is (571) 272-4022. The examiner can normally be reached on Monday through Friday, 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Apu Mofiz can be reached on (571) 272-4080. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Etienne LeRoux

1/25/2006

Etienne P. LeRoux
Primary Examiner